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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,172	12/21/2005	Harald Koellner	40149/01001	1304
30636 7590 08/04/2010 FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038				
EXAMINER STRIMBU, GREGORY J				
ART UNIT 3634		PAPER NUMBER		
MAIL DATE 08/04/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/562,172

Applicant(s)

KOEHLNER ET AL.

Examiner

Gregory J. Strimbu

Art Unit

3634

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-14 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date _____
- 6) ☐ Other: _____

Drawings

The drawing corrections filed December 16, 2009, May 4, 2009, and April 23, 2010 have been approved.

However, the drawings are still objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fixation elements must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 7 is objected to because it depends from canceled claim 3. In order to further the prosecution of the application, it has been assumed that claim 7 depends from claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1, 2, 4-14 and 16-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "an edge region" on line 8 of claim 1 render the claims indefinite because it is unclear whether or not the applicant is referring to the edge region set forth above. Recitations such as "a side of the base body distant to an interior" on lines 10-11 of claim 16 render the claims indefinite because it is unclear what the applicant is attempting to set forth. What element of the invention has the interior to which the applicant is referring? What comprises a "distant to" relationship? How far is distant? Recitations such as "and are separated by the peripheral seal" on line 12 of claim 16 render the claims indefinite because it is unclear what elements of the invention are separated by the seal.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-7, 12 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Koa et al. (US 6412852). Koa et al. discloses a module for covering an opening (not numbered, but shown in figure 1) in a motor vehicle door 10 and for supporting a door inner trim 20, comprising: a base body 35 including a base 42 and at least one bracket 41 movable with respect to the base, the bracket 41 including a supporting surface 37 for contacting an edge region surrounding the opening, the bracket including at least one fixation point 39 for fastening to a door trim 20, and fixation elements 25 for fastening the module on an edge region of the opening, wherein the fixation elements and the at least one bracket are functionally independent;

regarding claim 2, the module includes a sheet 35 of one of a metal and a plastic (see column 5, lines 41-43);

regarding claim 4, a peripheral seal 45 limiting the passage of moisture through the opening;

regarding claim 5, the bracket 41 is integrally formed on the base body 42;

regarding claim 6, the bracket 41 is coupled to the base by a film hinge 40;

regarding claim 7, the bracket 41 includes a clipping opening 39 sized to receive and clip therein a corresponding part 25 of the inner trim 20;

regarding claim 11, the bracket is fastened to the base by at least one spring element 40;

regarding claim 12, a plurality of fixation elements 25 fastening the module to the edge of the opening.

Claims 1, 2, 5, 6, 8, 9 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Lau et al. (US 5048234). Lau et al. discloses a module 24 for covering an opening 22 in a motor vehicle door and for supporting a door inner trim 70, comprising: a base body including a base 24 and at least one bracket 52 movable with respect to the base, the bracket including a supporting surface (not numbered, but shown in figure 4) contacting an edge region surrounding the opening, the bracket including at least one fixation point (not numbered, but comprising the hole through which the bolt 66 extends) for fastening to the door trim 70, and fixation elements (not shown, but comprising the portions of the base 24 that overlap the inner panel 14 as set forth in column 3, lines 4-6) for fastening the module on an edge region of the opening, wherein the fixation elements and the at least one bracket 52 are functionally independent;

regarding claim 2, the door module includes a sheet of one of a metal and a plastic;

regarding claim 5, the bracket 52 is integrally formed on the base body 24;

regarding claim 6, the bracket 52 is coupled to the base by a film hinge (not numbered, but shown in figure 4);

regarding claims 8, 9 and 12, the at least one bracket 52 comprises 3 to 20 brackets 54, 56, 58, 60;

regarding claim 11, the bracket 52 is fastened to the base 24 by at least one spring element (not numbered, but shown in figure 4);

regarding claim 13, an elasticity of the bracket 52 relative to the base 24 is such that the base is movable with respect to a support edge of the bracket in a direction substantially perpendicular to a plane of the door by up to 1 mm while maintaining pressure between the support edge and the edge of the opening as shown in figure 5;

regarding claim 14, an elasticity of the bracket relative to the base is such that the base is movable with respect to a support edge of the bracket in a direction substantially perpendicular to a plane of the door by 2-6 mm while maintaining pressure between the support edge and the edge of the opening as shown in figure 5.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lau et al. as applied to claims 1, 2, 5, 6, 8, 9 and 11-14, as set forth above. Lau et al. is silent concerning 8 to 12 brackets.

However, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design

choice, as determined through routine experimentation and optimization, for one of ordinary skill to provide Lau et al. with 8-12 brackets to increase the amount of force needed to displace the base during a collision.

Response to Arguments

Applicant's arguments filed April 23, 2010 have been fully considered but they are not persuasive.

The applicant argues that Koa et al. fails to disclose fixation elements that are functionally independent from the at least one bracket. This is not persuasive because at least the two lower fixation elements 25 have the function of fixing the door inner trim 20 and the module to the edge region of the opening. The function of the module is to prevent water from passing therethrough. Thus, the functions of the fixation elements and the module are independent. The applicant's comments concerning another possibility for water to pass from the wet side of the door to the dry side of the door are not persuasive because they are not supported by the claim language.

The applicant argues that Lau fails to disclose fixation points that are independent of fixation elements for fastening the module on an edge region of the opening. This is not persuasive because it is not supported by the claim language. Note that claim 1 recites that "the fixation elements and the at least one bracket are functionally independent". Claim 1 does not require the fixation points to be independent of the fixation elements as argued by the applicant.

The applicant argues that Lau fails to disclose fixation elements for fastening the module on an edge region of the opening, wherein the fixation elements and the at least one bracket are functionally independent. This is not found to be persuasive because the bracket 52 has the function of deforming during a side impact collision while the function of the fixation elements is cause the base 24 or the inner panel 14 to deform during a side impact. Thus, the functions are independent.

Finally, it should be noted that claim 16 does not require the fixation elements to be functionally independent from the at least one bracket.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory J. Strimbu/
Primary Examiner, Art Unit 3634